

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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COMMERCIAL CASUALTY INSURANCE	)	
COMPANY, a California corporation,	)	2:06-cv-00635-LRH-PAL
Plaintiff,	)	<u>ORDER</u>
vs.	)	
SWARTS, MANNING & ASSOCIATES,	)	
INC., a Nevada corporation, et al.,	)	
Defendants.	)	
<u>AND RELATED MATTERS.</u>	)	

Before the court are Defendant Dixie Leavitt Agency's (hereafter "Dixie Leavitt") Motion for Summary Judgment against L & S Air Conditioning Heating and Fireplaces, LLC (hereafter "L & S") (#73), an opposition has been filed by L & S (#79), and a reply has been filed by Dixie Leavitt (#82).

Also before the court is L & S's Motion to Withdraw or Amend Admissions Pursuant to Fed. R. Civ. P. 36(b) (#78), an opposition has been filed by Dixie Leavitt (#83), and a reply has been filed by L & S (#84).

These two matters are related. After Dixie Leavitt had granted two requests for extensions requested by L & S on December 28, 2006, to January 9, 2007, and on January 8, 2007, to January 16, 2007, for responses to Dixie Leavitt's Request for Admissions, L & S failed to respond by the second extension deadline, but did serve its response one day beyond the extension date. Approximately four weeks after receiving the belated responses by L & S,

1 Dixie Leavitt filed its Motion for Summary Judgment (#73) relying upon the admissions by  
2 default due to the untimely response by L & S. L & S's Motion to Withdraw or Amend  
3 Admissions (#78) followed.

4 Upon consideration of these matters, the court will grant L & S's Motion to Withdraw or  
5 Amend Admissions (#78) upon the grounds that Dixie Leavitt has demonstrated no prejudice and  
6 the presentation of the merits of this action would be subverted if this motion was not granted.  
7 See Fed. R. Civ. P. 36(b). To not grant relief would amount to a default on the merits against L  
8 & S due to a delayed response of one-day in the early discovery stages of this litigation.

9 As Dixie Leavitt's Motion for Summary Judgment was based entirely upon the untimely  
10 response to its Request for Admissions by L & S and the court has granted relief to L & S herein,  
11 Dixie Leavitt's Motion for Summary Judgment (#73) will be denied as moot.

12 No sanctions will be awarded to either party based upon the obvious lack of prejudice in  
13 this history.

14 IT IS SO ORDERED.

15 DATED this 3<sup>rd</sup> day of April, 2007.



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19 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE